



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Will Allen, 797-2093

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE TOWN OF DAVIE AND THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION FOR A PARK SITE LOCATED ADJACENT TO THE FLORIDA TURNPIKE, APPROXIMATELY 1300 FEET NORTH OF STIRLING ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town has been in negotiations with the Florida Department of Transportation for consideration of a surplus barrow pit site know as Silver Lake. Town Attorney Kiar finalized the negotiations with the attorney representing FDOT, Mr. Leonard as is shown in backup materials. This parcel of approximately 39.19 acres is west of the Florida Turnpike, east of SW 55 Avenue and north of SW 57 Avenue. The parcel contains two large water bodies bisected by a land bridge from the SW to NE corner. This parcel has been the subject of ongoing discussions between adjacent residents and FDOT regarding the utilization of the south and westerly lake perimeters which have been historically utilized by the adjacent property owners.

The terms of the Lease Agreement provide for a 50 year lease beginning October 1, 2000. The annual rent is \$500.00 per year. The leased land can be used solely for the purpose of public park and lake recreation area. No structures or other improvements of any kind shall be placed upon the land without prior written approval of District 8 of FDOT. The Town must supply insurance with certificates naming FDOT as an additional insured. The agreement indicates that the Town recognizes that abutting property owners have constructed docks and other structures which encroach on the property. If the Town has no objection to such encroachments then FDOT has no objection. If the Town objects to such encroachments and cannot reach acceptable accommodation with each abutting owner concerning such encroachment then Town has authority to cause such encroachment to be removed by due process. The Town is to prepare and submit to FDOT a management plan for the leased premises. The management plan is to be submitted within two months of the effective date of the lease. The premises cannot be altered or developed without a management plan. Components of the management plan include strategies for dealing with exotic species, and accommodation with or removal of encroachments by abutting private property owners. Prior written permission of FDOT is required prior to the construction of all buildings, structures and improvements. No trees other than non-native species shall be removed or major land alterations done without the prior approval of FDOT.

A community workshop was held on June 1, 2000 to discuss development options and secure neighborhood input on how the site should be used. A number of issues were discussed with comments noted in the attached memorandum, Exhibit "B". Discussion focused on a limited passive park environment supporting non-motorized water uses, fishing, hiking, nature walks and picnicking .

PREVIOUS ACTIONS: Not applicable

CONCURRENCES: Not applicable

FISCAL IMPACT: The annual rent for the lease is \$500.00 per year. The Town is responsible for the costs of all improvements, buildings and structures on this site.

RECOMMENDATION(S): Motion to approve the Resolution

Attachment(s): Resolution
Exhibit "A " Lease Agreement
Exhibit "B" Meeting Synopsis
August 10, 2000 Letter From Town Attorney Kiar to FDOT Attorney Leonard
September 25, 2000 Memorandum from Town Attorney Kiar

RESOLUTION NO.

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE TOWN OF DAVIE AND THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION FOR A PARK SITE LOCATED ADJACENT TO THE FLORIDA TURNPIKE APPROXIMATELY 1300 FEET NORTH OF STIRLING ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the policy of the Town of Davie to provide open space parks and recreational facilities within the Town; and

WHEREAS, the Town is desirous of leasing a parcel of land known as FDOT Parcel #93S104, containing approximately 39.19 acres for utilization as a public open space park; and

WHEREAS, the attached Lease Agreement with the Florida Department of Transportation, a copy of which is attached as Exhibit "A" provides for the lease of this property for a 50 year term at an annual rate of \$500.00.;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Mayor is authorized to execute the Lease Agreement between the Town of Davie, Florida and the State of Florida, Department of Transportation, a copy of which is attached hereto as Exhibit "A"

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

ACTING TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT

W.P.I./SEGMENT NO.: _____
MANAGING DISTRICT: 8
F.A.P. NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____

THIS AGREEMENT, made this _____ day of September, 2000, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and the TOWN OF DAVIE, a political subdivision of the State of Florida, of 6591 Orange Drive, Davie, Broward County, Florida 33314-3399, (hereinafter called the Lessee.)

WITNESSETH:

In consideration of One Dollar (\$1.00) and other good and valuable considerations, the Parties agree as follows:

1. **Property and Term.** Lessor does hereby lease unto Lessee the lands described in Exhibit "A", for a term of Fifty (50) years beginning October 1, 2000 and ending September 30, 2050.

If Lessee holds over and remains in possession of the land after the expiration of the term specified in this Lease, or any renewal of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place, and to the maintenance thereof, as well as any other covenants, easements, or restrictions of record.

This lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. **Use.** The leased land shall be used solely for the purpose of Public Park and lake recreational area. If the land is used for any other purpose, the Lessor shall have the option of immediately terminating this Agreement. Lessee shall not permit any use of the land in any manner that would obstruct or interfere with any transportation facilities.

The Lessee will further use and occupy said premises in a careful and proper manner, and not commit any waste thereon. Lessees will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The Lessee will not use or occupy said premises for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and / or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

3. **Rent.** Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of \$500.00 for each Year of the term. If this Agreement is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor shall be refunded to Lessee. Lessee shall pay any and all state, county, city, and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made

payable to the Department of Transportation and shall be sent to P.O. Box 783009, Winter Garden, FL 34778-3009. Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. Improvements. No structures or other improvements of any kind shall be placed upon the land without the prior written approval of the District Secretary for District 8. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense.

Lessee shall perform, at its sole cost and expense, all work required in the preparation of the leased land for occupancy by the leased land for occupancy by the Lessee, in the absence of any special provision herein to the contrary. Lessee does hereby accept the leased land from the Lessor, and represents to Lessor that the leased land is now in a fit and tenable condition for all intended purposes of the Lessee.

Lessor reserves the right to enter the leased land for the purpose of inspecting the land and improvements, and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustment shall be done at Lessee's sole cost and expense.

5. Maintenance. Lessee shall keep and maintain the land and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this lease, and shall keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same from becoming dangerous, inflammable or objectionable. Lessor shall have no duty to inspect or maintain any of the land, buildings or other structures, if any, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the property for purposes of inspection, including conducting an environmental assessment. Such assessment may include but would not be limited to: surveying, sampling of building materials, soil and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which might be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the property. In the event of emergency due to a release or suspected release of hazardous waste on the premises, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice.

6. Indemnification. To the extent that the sovereign immunity of the State, its agencies and subdivisions, is waived in tort in Section 768.28, Florida Statutes, the Lessee agrees to indemnify the Lessor from all damages arising from the Lessee's negligent use of the land leased from Lessor during the term of this lease, and any extensions thereof.

7. Insurance. Lessee at its expense, shall maintain at all time during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons or property or for the loss of life or property occurring in, on or about the land arising out of the act, negligence, omission, nonfeasance or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than one million (\$1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million (\$1,000,000.00) for property damage. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional name insured under the policies or alternatively shall certify to self-insurance. Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the land and any improvements on the land fully insured against loss

or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep its contents and personal property located on the land fully insured against subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of Landlord and Tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law but not limited to (i) any residual interest in the Lease, or (ii) any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages, severance damages, removal costs or loss of business profits resulting from its loss of occupancy of the leased property specified in the Agreement, or adjacent properties owned or leased by it, when any or all such properties are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether (i) this Lease is still in existence on the date of taking or sale; or (ii) has been terminated prior thereto.

9. Miscellaneous.

a. This Agreement may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder.

b. In the case of litigation arising out of the enforcement of any terms, covenants or provisions of this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both such parties.

d. Lessee shall not sublet the lease property or any other thereof, nor assign this Lease, without the prior consent in writing of the Lessor, this Lease being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone and telegraph services, or any other utility or service used on the land.

f. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address.

h. Lessor will allow Lessee access across Lessor's property for the purpose of maintenance of the property described in Exhibit "A" attached.

i. The Lessee warrants that the remainder of the land previously maintained by Lessee has been maintained and is in compliance with FAA requirements and that no maintenance will be required on such additional property during the term of the lease.

IN WITNESS WHEREOF, the parties hereto have cause these presents to be executed, the day and year first above written.

LESSOR

LEGAL REVIEW:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

District Counsel

By: _____
District Secretary

James L. Ely
Print Name

Attest: _____ (SEAL)
Executive Secretary

LESSEE

By: _____

Print Name

Title: _____

Attest: _____ (SEAL)

Title: _____

ADDENDUM TO LEASE AGREEMENT

1. DELEGATIONS OF AUTHORITY: Lessor's responsibilities and obligations herein shall be exercised by the State of Florida, Department of Transportation, Turnpike District.
2. PURPOSE: Lessee shall manage the leased premises only for the establishment and operation of the leased premises as a *lake recreational area and public park* open to the public, along with other related uses necessary for the accomplishment of this purpose as designated in the Management Plan required by paragraph 5 of this lease addendum.
3. QUIET ENJOYMENT AND RIGHT OF USE: Lessee shall have the right of ingress and egress to, from, and upon the leased premises for all purposes necessary to the full quiet enjoyment by said Lessee of the rights conveyed herein; provided however, that Lessor has disclosed to Lessee, and Lessee understands, that certain abutting property owners have constructed upon their own properties docks and other structures that encroach into the borrow lakes upon the property described in Exhibit "A." If such encroaching docks and other structures are acceptable to Lessee, then Lessor has no objection to such encroachments remaining during the term of this lease. If the Lessee objects to such encroachments, and cannot reach an acceptable accommodation with each such abutting property owner concerning such

encroachments, then Lessee shall have the authority to cause such encroachments to be removed by due process of law.

4. **UNAUTHORIZED USE:** Lessee, at its option, shall, through its authorized agents and employees, exercise every reasonable effort to prevent the unauthorized use of the leased premises or any use thereof not in conformance with this lease.
5. **MANAGEMENT PLAN:** Lessee shall prepare and submit to the Lessor a Management Plan for the leased premises, including the accommodation with or removal of encroachments by abutting private property owners, within two months of the effective date of this lease. The Management Plan shall be submitted to Lessor for approval, except for the removal of existing encroachments. The leased premises shall not be developed or physically altered in any way other than what is necessary for security and maintenance of the leased premises without the prior written approval of Lessor until the Management Plan is approved. The Management Plan shall emphasize the original management concept as approved by Lessor on the effective date of this lease which established the primary public purpose for which the leased premises are to be managed. The approved Management Plan shall provide the basic guidance for all management activities and shall be reviewed jointly by Lessee and Lessor at least every five years. Lessee shall not use or alter the leased premises except as provided for in the approved Management Plan without the prior written approval of Lessor. The Management Plan prepared under this lease shall identify management strategies for exotic species, if present. The introduction of exotic species is prohibited, except when specifically authorized by the approved Management Plan.

6. **RIGHT OF INSPECTION:** Lessor or its duly authorized agents shall have the right at any time to inspect the leased premises and the works and operations thereon of Lessee, in any matter pertaining to this lease.
7. **INSURANCE REQUIREMENTS:** Lessee shall procure and maintain fire and extended risk insurance coverage in accordance with chapter 284, Florida Statutes, for any buildings and improvements to be located on the leased premises by preparing and delivering to the Division of Risk Management, Department of Insurance, a completed Florida Fire Insurance Trust Fund coverage Request Form and a copy of this lease immediately upon erection of any structures as allowed by paragraph 4 of this lease. A copy of said form and immediate notification in writing of any erection or removal of structures or other improvements on the leased premises and any changes affecting the value of the improvements on the leased premises and any changes affecting the value of the improvements shall be submitted to the following: State of Florida, Department of Transportation, Turnpike District, Department of Land Management, Post Office Box 783069, Winter Garden, Florida 34787.
8. **ARCHAEOLOGICAL AND HISTORIC SITES:** Execution of this lease in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes (1999). The collection of artifacts or the disturbance of archaeological and historic sites on state owned lands is prohibited unless prior authorization has been obtained from the Division of Historical Resources of the Department of State. The Management Plan prepared pursuant to paragraph 7 hereof shall be reviewed by the Division of Historical Resources to insure that adequate measures have been planned

to locate, identify, protect and preserve the archaeological and historic sites and properties on the leased premises.

9. **UTILITIES:** In the event that the Lessee elects to construct any structures or other improvements on the property described in the attached Exhibit "A" that require the services of gas, electrical, telephone, water, sewer, or other utilities, then Lessee and the respective utility company shall request a *permit* from Lessor, and not an *easement*. Lessor will not unreasonably refuse the permit, but under no circumstances will Lessor provide a utility easement. Lessee shall be responsible for the payment of all charges for the furnishing of gas, electricity, water, sewer, and all other public utilities to the leased premises and for having all utilities turned off when the leased premises are surrendered.
10. **SUBLEASES:** This lease is for the purposes specified herein and subleases of any nature are prohibited, without the prior written approval of Lessor. Any sublease not approved in writing by Lessor shall be void and without legal effect.
11. **ENVIRONMENTAL AUDIT:** At Lessor's discretion, Lessee shall provide Lessor with a current Phase I environmental site assessment conducted in accordance with the Department of Environmental Protection, Division of State Land's standards prior to termination of this lease, and if necessary a Phase II environmental site assessment.
12. **SURRENDER OF THE PREMISES:** Upon expiration or termination of this lease, Lessee shall surrender the leased premises to Lessor, in as good a condition as they were in at the commencement of this lease, normal wear and tear excepted. In the event no further use of the leased premises or any part thereof is needed, Lessee shall give written notification to the State of Florida, Department of Transportation,

Turnpike District, Post Office Box 783069, Winter Garden, Florida 34787, at least six months prior to the release of any or all of the leased premises. Notification shall include a legal description, this lease number, and an explanation of the proposed release. The release shall only be valid if approved by Lessor through execution of a release of lease instrument with the same formality as this lease. Upon release of all or any part of the leased premises or upon expiration or termination of this lease, all improvements, including both physical structures and modification to the leased premises, shall become the property of the Lessor, unless Lessor gives written notice to Lessee to remove any or all such improvements at the sole expense of Lessee. The decision to retain any improvements upon termination of this lease shall be at Lessor's sole discretion. Prior to surrender of all or any part of the leased premises, a representative of the State of Florida, Department of Transportation, Turnpike District, shall perform an on-site inspection and the keys to any buildings on the leased premises shall be turned over to the Lessor. If the leased premises do not meet all conditions as set forth in paragraphs 19 and 22 herein, Lessee shall, at its expense, pay all costs necessary to meet the prescribed conditions.

13. **BEST MANAGEMENT PRACTICES:** Lessee shall implement applicable Best Management Practices for all activities conducted under this lease in compliance with paragraph 18-2.018(2)(h), Florida Administrative Code, which have been selected, developed, or approved by Lessor or other land managing agencies for the protection and enhancement of the leased premises.
14. **MINERAL RIGHTS:** This lease does not cover petroleum or petroleum products or minerals (specifically including topsoil, muck, peat, humus, sand, limerock, and

common clay, as recited in Section 689.20, Florida Statutes) and does not give the right to Lessee to excavate, drill for or develop the same. Lessor specifically reserves the right to lease the leased premises for the purpose of exploring and recovering oil and minerals by whatever means appropriate; provided, however, that Lessee shall be fully compensated for any and all damages that might result to the leasehold interest of Lessee by reason of such exploration and recovery operations.

15. **ASSIGNMENT:** This lease shall not be assigned in whole or in part without the prior written consent of Lessor. Any assignment made either in whole or in part without the prior written consent of Lessor shall be void and without legal effect.
16. **PLACEMENT AND REMOVAL OF IMPROVEMENTS:** All building, structures, improvements, and signs shall be constructed at the expense of Lessee in accordance with the plans prepared by professional designers, and shall require the prior written approval of Lessor as to the purpose, location, and design. Further, no trees, other than non-native species, shall be removed or major land alterations done without the prior written approval of Lessor. Removable equipment and removable improvements placed on the leased premises by Lessee and which do not become a permanent part of the leased premises will remain the property of Lessee and may be removed by Lessee upon termination of this lease.
17. **MAINTENANCE OF IMPROVEMENTS:** Lessee shall maintain the real property contained within the leased premises and any improvements located thereon, in a state of good condition working order and repair including, but not limited to, maintaining the planned improvements as set forth in the approved Management Plan, meeting all building and safety codes in the location situated, keeping the leased

premises free of trash or litter and maintaining any and all existing roads, canals, ditches, culverts, risers and the like in as good condition as the same may be on the effective date of this lease.

18. **ENTIRE UNDERSTANDING:** This lease sets forth the entire understanding between the parties and shall only be amended with the prior written approval of the Lessor. All prior representations and negotiations are merged into this Lease Agreement and do not survive the execution of the same.
19. **BREACH OF COVENANTS, TERMS, OR CONDITIONS:** Should Lessee breach any of the covenants, terms, or conditions of this lease, Lessor shall give written notice to Lessee to remedy such breach within sixty days of such notice. In the event Lessee fails to remedy the breach to the satisfaction of Lessor within sixty days of receipt of written notice, Lessor may either (a) terminate and recover from Lessee all damages Lessor may incur by reason of the breach including, but not limited to, the cost of recovering the leased premises, or (b) maintain this lease in full force and effect and exercise all rights and remedies conferred upon Lessor.
20. **NO WAIVER OF BREACH:** The failure of Lessor to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this lease shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of Lessor of any one of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by Lessor.

21. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Lessor holds fee simple title to the leased premises. Lessee shall not or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the leased premises including, but not limited to, mortgages, construction liens, or utility easements against the leased premises or against any interest of Lessor therein.
22. **CONDITIONS AND COVENANTS:** All of the provisions of this lease shall be deemed covenants running with the land included in the leased premises, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.
23. **DAMAGE TO THE PREMISES:** (a) Lessee shall not do, or suffer to be done, in, on or upon the leased premises or as affecting said leased premises or adjacent properties, any act which may result in damage or depreciation of value to the leased premises or adjacent properties, or any part thereof. (b) Lessee shall not generate, store, produce, place, treat, release or discharge any contaminants, pollutants or pollution, including, but not limited to, hazardous or toxic substances, chemicals or other agents on, into, or from the leased premises or any adjacent lands or waters in any manner not permitted by law. For the purposes of this lease, "hazardous substances" shall mean and include those elements or compounds defined in 42 U.S.C. Section 9601 or which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) and the list of toxic pollutants designated by the United States Congress or the EPA or defined by

any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant. "Pollutants" and "pollution" shall mean those products or substances defined in Chapters 376 and 403, Florida Statutes, and the rules promulgated there under, all as amended or updated from time to time. In the event of Lessee's failure to comply with this paragraph, Lessee shall, at its sole cost and expense, promptly commence and diligently pursue any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration and monitoring of (1) the leased premises, and (2) all off-site ground and surface waters and land affected by Lessee's failure to comply, as may be necessary to bring the leased premises and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders, and decrees, and to restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage. Lessee's obligations set forth in this paragraph shall survive the termination or expiration of this lease. Nothing herein shall relieve Lessee of any responsibility or liability prescribed by law for fines, penalties and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by Lessee's activities or facilities. Upon discovery of a release of hazardous substance or pollutant, or any other violation of local, state or federal law, ordinance, code, rule, regulation, order or decree relating to the generation, storage, production, placement, treatment, release or discharge of any contaminant, Lessee shall report such violation to all applicable governmental

any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant. "Pollutants" and "pollution" shall mean those products or substances defined in Chapters 376 and 403, Florida Statutes, and the rules promulgated there under, all as amended or updated from time to time. In the event of Lessee's failure to comply with this paragraph, Lessee shall, at its sole cost and expense, promptly commence and diligently pursue any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration and monitoring of (1) the leased premises, and (2) all off-site ground and surface waters and land affected by Lessee's failure to comply, as may be necessary to bring the leased premises and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders, and decrees, and to restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage. Lessee's obligations set forth in this paragraph shall survive the termination or expiration of this lease. Nothing herein shall relieve Lessee of any responsibility or liability prescribed by law for fines, penalties and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by Lessee's activities or facilities. Upon discovery of a release of hazardous substance or pollutant, or any other violation of local, state or federal law, ordinance, code, rule, regulation, order or decree relating to the generation, storage, production, placement, treatment, release or discharge of any contaminant, Lessee shall report such violation to all applicable governmental

agencies having jurisdiction, and to Lessor, all within the reporting periods of the applicable governmental agencies.

24. **PAYMENT OF TAXES AND ASSESSMENTS:** Lessee shall assume full responsibility for and shall pay all liabilities that accrue to the leased premises or to the improvements thereon, including any and all drainage and special assessments or taxes of every kind, and all mechanic's or construction liens which may be hereafter lawfully assessed and levied against the leased premises.
25. **NON-DISCRIMINATION:** Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, sexual orientation, national origin, age, handicaps, or marital status with respect to access to the leased premises or any activity occurring within the leased premises or upon lands adjacent to and used as an adjunct of the leased premises.
26. **COMPLIANCE WITH LAWS:** Lessee agrees that this lease is contingent upon and subject to Lessee obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.
27. **TIME:** Time is expressly declared to be of the essence of this lease.
28. **GOVERNING LAW:** This lease shall be governed by and interpreted according to the laws of the State of Florida.
29. **SECTION CAPTIONS:** Articles, subsections and other captions contained in this lease are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this lease or any provisions thereof.

30. **PUBLIC RECORDS:** This lease may be terminated by Lessor should Lessee fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this lease, pursuant to Chapter 119, Florida Statutes.

**EXHIBIT "A" TO LEASE AGREEMENT BETWEEN
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, AS LESSOR
AND
TOWN OF DAVIE, AS LESSEE**

Property in Broward County, Florida, known as Silver Lake, more particularly described as:

Tract 9, LESS the South 50 feet of the West 620 feet of said tract, in Section 35, Township 30 South, Range 41 East, according to the Plat of NEWMAN SURVEY, recorded in Plat Book 2, Page 26, Public Records of Dade County, Florida, said land situate, lying and being in Broward County, Florida.

See Boundary Survey for parcel 0104, Broward County, Florida, State Project No. 97970-2303, prepared by Baseline Engineering and Land Surveying, Inc., and identified as Project No. 94-06-120.

EXHIBIT "B"

TOWN OF DAVIE OFFICE OF THE TOWN ADMINISTRATOR

MEMORANDUM

TO: Bob Rawls, Assistant Town Administrator
FROM: Will Allen, Programs Administrator
DATE: June 19, 2000
SUBJECT: Silver Lakes Meeting- June 1, 2000

This serves a synopsis of the public meeting held concerning Silver Lake on June 1, 2000 in the Community Room and is a reminder of the timing suggested at that meeting. The meeting was very well attended with approximately 75 persons from the neighborhood. The purpose of the meeting was to discuss how the people in the neighborhood wanted the nearly 40 acre parcel with two lakes taking up about 23 acres to be used. A fact sheet about the site is attached. The owner of the property is FDOT. FDOT has indicated an intent to fence off the lake to secure its property. There are currently about 34 homes which abut the lake and which have direct access to the property. Another potential option is for the Town to lease the property. The Town would attempt to maintain the current appropriate activities while allowing public access with activities focused at the northeast corner of the site.

At the meeting there was substantial comments and discussion about the potential options. What follows is a summary of comments which were made. It is important to note that it was indicated at the meeting that this item would most likely be considered at the JULY 19, 2000 TOWN COUNCIL MEETING.

COMMENTS:

Access- There was a concern about where the access would be located and the attendant concerns of traffic concerns and safety of children.

Traffic- The theme of traffic concerns was raised by several people. It was indicated the most likely access point would be at the southeast corner where the existing fence and barricade are located. There were comments about the neighborhood having a lot of children and being children oriented. It was commented that a great deal of traffic is not expected and usage of the park would be mostly from the neighborhood.

Use as a bird sanctuary- This comment brought applause from the audience.

Why do we want people to fish in our lake?

Boats? It was indicated there would be no rental boats or boat ramp and gasoline engines would not be allowed.

Facilities? It was indicated the facilities at a park would be very limited and the hours would be limited to sunrise to sundown.

Traffic- concern for children.

ATVS? They would not be allowed. There would be trails for hiking, horses, and bikes.

There was a comment about the use of grills and potential fire hazards.

Security- There were comments that security would be needed at the site. there have been vagrants on the site. It was asked if perhaps a policeman could live on the site.

It was commented that the residents would like to see a copy of the lease prior to approval.

Traffic- It was indicated a great deal of traffic would not be expected because of the park. Comparisons were made to the existing facilities at Wolf Lake.

Trees along the Turnpike- Concern was expressed that Australian Pines were recently removed along the eastern portion of the site and now the Turnpike is visible and the noise has increased. It was indicated the Town is looking into who removed the Australian Pines. It may have been FDOT, FPL or the drainage district. It was indicated that the Town had petitioned for a meeting concerning the placement of a sound wall along the Turnpike which had been deferred to the Turnpike Authority.

A concern was expressed about invading the privacy of those now living on the lake. A person in the audience commented that Robbins Park is great and does not bother adjoining residents. Another commented that the park is a great idea so long as it is similar to Wolf Lake.

It was suggested that the existing Australian Pines be kept on the property. It was mentioned that some logs had been dumped into the lake when the trees along the Turnpike were removed.

Another person suggested have a security person live on the lake.

An overview of the meeting was given at the end of the session. The preferred option is that no other uses be on the site. There was no support

for the State of keep the property and fence it off. There was some concern for boating with a consensus that there be no rental boats, no boat ramp and no gasoline motors. Hiking would be on the site and trails could be used by horses and bikes. The site would allow picnicking. A concern was expressed about grills but the consensus was that grills are acceptable.

m


MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

MEMORANDUM

DATE: September 25, 2000

TO: Will Allen, Programs Administrator

CC: Thomas Willi, Town Administrator

FROM: Monroe Kiar 

RE: Control #000705/Silver Lake Lease Agreement

Pursuant to our conversation of this date, attached please find a copy of the Lease Agreement and a copy of Mr. Leonard's letter of September 14, 2000. The two originals of the Lease Agreement were sent to the Town Clerk, Barbara McDaniel, on September 22, 2000.

As I indicated, the only thing missing is Exhibit "A" which is apparently the legal description of the property. It was believed from my earlier discussions with Mr. Rawls, that a copy of the legal description was contained in his file. You however, were not able to locate a copy of the legal description. I have written to Mr. Leonard requesting that he provide a copy of same to us. As soon as I receive it, I will have it faxed to you at once.

MDK/gmv
enclosure

TOWN ATTORNEY'S OFFICE

TOWN OF DAVIE, FLORIDA

6191 SW 45th Avenue

Suite 6151A

Davie, Florida 33314

(954) 584-9770

Monroe D. Kiar

Town Attorney

August 10, 2000

Sent VIA Facsimile
(850) 921-8381

Mr. Jack Lennard
FDOT General Counsel
1211 Governor Square Boulevard
Tallahassee, Florida 32301

Re: FDOT Lease with the Town of Davie concerning
Silver Lakes

Dear Mr. Lennard:

It is my understanding that you have spoken with our Assistant Town Administrator, Mr. Robert Rawls, with regard to some of the concerns that I have expressed to him and to the Town Council with regard to the provisions of the proposed Lease Agreement sent to the Town by the Florida Department of Transportation.

Specifically, the following are my comments concerning the specific provisions:

Main Lease

Paragraph 3: The adjustment of the rent to reflect "market conditions" would appear not to be appropriate in this instance. The lease is in a format where the State or a State agency would lease to a private entity, but not in a format that would seem applicable for the State leasing to a municipality. This needs to be clarified or deleted.

Paragraph 4: The last two sentences, I feel, should be deleted since they are subject to the lessor's "sole discretion". In my opinion, this needs to be revised to give greater input and discretion to the lessee.

Paragraph 6: The indemnification language should ideally be changed so that Davie can provide the defense. The current language used in the proposed agreement is that it is anticipated that the Department will participate in any such litigation and the Town would have to pay the Department's attorney's fees and costs. The Department would be adequately protected with language that I could provide which would give the Town the right to provide the defense since the Town will have to pay the judgment under indemnity provision.

Major Issue: Paragraph 9(a): Obviously, this is not a 50 year lease if the Department can terminate it with only 90 days notice. Will you please advise us as to the purpose of the Department wanting this provision there. Since this is meant to be a 50 year lease and in light of what appeared to be obligations of the Town under the provisions of the lease, it would have to be my recommendation that the lease not be entered into with the 90 day right of termination provision included.

Addendum

Major Issue: Paragraph 3: Apparently there are encroachments which the Department is familiar with. Reading paragraph 3 would appear to indicate that the Department is looking to the Town to clear up the encroachments. If the Department does not care about the encroachments, then the language should be changed so it is not a Town responsibility. If, on the other hand, the Department does care, this might be placing the Town in a position where it would be ultimately involved in many litigations over the encroachments.

Paragraph 4: This provision needs to be slightly revised. For example, it could read "Lessee, at its option, shall, through its agents and employees, exercise every reasonable effort to prevent the unauthorized use of the leased premises or any use thereof not in conformance with this Lease."

Paragraph 11: Will you please advise me as to the purpose of this paragraph. Is there a suspicion of contamination at the present time?

I tried reaching you by phone yesterday, but you were no longer in your offices when I called. I would appreciate it if you would call me upon your receipt of this letter so that we may discuss together the concerns which I have expressed in this letter. I am confident that these can be amicably resolved.

Sincerely,


MONROE D. KIAR

MDK/gmv

cc: Thomas Willi, Town Administrator-Town of Davie